

REMARKS

At the time of the Office Action dated July 17, 2006, claims 1-15 were pending and rejected in this application. By this amendment, claim 1 has been amended to include the limitations previously presented in claims 3 and 5, claim 7 has been amended to include the limitations previously presented in claim 9, and claim 10 has been amended to include the limitations previously presented in claims 12 and 14. Consequently, claims 3, 5, 9, 12, and 14 have been cancelled. Independent claim 7 has also been amend to recite that the component installation engine updates dated ones of the dependencies with updated ones of the dependencies prior to installing the application components. Claims 4 and 6 have been amended to address dependency issues arising from the cancellation of claim 3, and claims 13 and 15 have been amended to address dependency issues arising from the cancellation of claim 12.

On page 2 of the Office Action, the Examiner objected to the declarations for failing to include the date of execution by two of the inventions. Applicants will subsequently file a supplemental declaration to address this issue.

On pages 2 and 3 of the Office Action, the Examiner objected to the drawings. Specifically, the Examiner asserted "[t]he drawings are objected to because the descriptive text labels are not in accordance with the specification in Figure 3, Elements 320, 325, and 345."

Upon reviewing the Examiner's statement and the M.P.E.P., Applicants respectfully submit that the Examiner has failed to set forth a proper objection to the drawings. Applicants

are unaware of any requirement that "descriptive text labels [be] in accordance with the specification." As is readily apparent from the drawings, the blocks within a flow chart only provide limited space into which descriptive text labels may be inserted. For example, block 310 states "Identify Reqs" instead of "Identify Requirements" because of space considerations.

With regard to blocks 320, 325, and 345, Applicants have used the descriptive label "OK?" to connote that a decision is to be made. Since each block is labeled with a reference number, the exact nature of the decision can be determined by referring back to the specification. Applicants, therefore, submit that the drawings are in full compliance with the rules governing the requirements for the drawings. Thus, Applicants solicit withdrawal of the imposed objection to the drawings.

On page 3 of the Office Action, the Examiner objected to paragraphs [0003] and [0013] of the specification. By this amendment, Applicants have amended these paragraphs in the manner suggested by the Examiner.

On pages 3 and 4 of the Office Action, the Examiner objected to both the specification and claims with regard to the inclusion of a comma "," after the phrase "; and". This is not a typographical error, and Applicants are unaware as to why this is objectionable. Since the Examiner has not set forth a reason as to why the inclusion of a comma in the phrase "; and," is objectionable, Applicants respectfully solicit withdrawal of the imposed objection to the claims and the specification.

On page 3 of the Office Action, the Examiner objected to claims 1 and 10. By this amendment, Applicants have amended these claims to address the Examiner's objection.

CLAIMS 7-9 ARE REJECTED UNDER 35 U.S.C. § 101

With regard to claims 7-9, the Examiner asserted the following on page 4 of the Office Action:

the structural components of the systems for performing the recited functionalities can be reasonably interpreted as computer software modules -- software *per se*, since the specification discloses that the present invention can be realized in software. Therefore, the claims are directed to systems of functional descriptive material *per se*, and hence non-statutory.

The Examiner is directed to pages 50-53 of the latest version of the "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility"¹ issued on November 22, 2005 (hereinafter "Interim Guidelines"). As described therein, a claim directed "software *per se*" is not what the Examiner believes it to be. For example, a claim to software *per se*, would be to a claim to the software program itself, i.e., to only its description or expression, without anything else.

With regard to software, as part of a machine, the follow comments are found within the Interim Guidelines:

Computer programs are often recited as part of a claim. USPTO personnel should determine whether the computer program is being claimed as part of an otherwise statutory manufacture or machine. In such a case, the claim remains statutory irrespective of the fact that a computer program is included in the claim. The same result occurs when a computer program is used in a computerized process where the computer executes the instructions set forth in the computer program. Only when the claimed invention taken as a whole is directed to a mere program listing, i.e., to only its description or expression, is it descriptive material *per se* and hence nonstatutory.

¹ Official Gazette Notices, November 22, 2005.

Applicants note that claims 7-9 are directed to a machine (i.e., a system), and on this basis, without need for further argument, claims 7-9 are directed to statutory subject matter. Therefore, for the reasons stated above, Applicants respectfully solicit withdrawal of the imposed rejection of claims 7-9 under 35 U.S.C. § 101.

**CLAIMS 1-4, 7-8, AND 10-13 ARE REJECTED UNDER 35 U.S.C. § 102 FOR ANTICIPATION
BASED UPON ZIMNIEWICZ ET AL., U.S. PATENT NO. 6,744,450 (HEREINAFTER ZIMNIEWICZ)**

On pages 5-10 of the Office Action, the Examiner asserted that Zimniewicz discloses the invention corresponding to that claimed. This rejection is respectfully traversed.

As previously noted, independent claims 1, 7, and 10 have been amended to include limitations that the Examiner has admitted is not identically disclosed by Zimniewicz. Applicants, therefore, respectfully solicit withdrawal of the imposed rejection of claims 1-2, 4, 7-8, 10-11, and 13 under 35 U.S.C. § 102 for anticipation based upon Zimniewicz.

**CLAIMS 5-6, 9, AND 14-15 ARE REJECTED UNDER 35 U.S.C. § 103 FOR OBVIOUSNESS
BASED UPON ZIMNIEWICZ IN VIEW OF DONOHUE, U.S. PATENT NO. 6,202,207**

On pages 10-15 of the Office Action, the Examiner concluded that one having ordinary skill in the art would have been motivated to modify Bhat in view of Sullivan to arrive at the claimed invention. This rejection is respectfully traversed.

Since independent claims 1, 7, and 10 have been amended to include the limitations previously presented in claims 5, 9, and 12, Applicants will address the rejections as to claims 5,

9, and 12 as these rejections would apply to independent claims 1, 7, and 10. With regard to claims 1 and 10, the Examiner asserted that:

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to allow updating dated ones of said required ones of said dependencies which can be accessed in said target platform with updated versions of said required ones of said dependencies in the system of Zimniewicz et al., since Zimniewicz et al. already provided the current version of the component to allow the user to make informed decisions about updating or reinstalling components (see *Column 13, Lines 14-17*). One would have been motivated to allow updating dated one of said required ones of said dependencies which can be accessed in said target platform with updated versions of said required ones of said dependencies in order to correct bugs and/or add new features in the software products (see *Column 1, Lines 21-23*).

Applicants respectfully submit that even if one having ordinary skill in the art were motivated to modify Zimniewicz in view of Donohue, the claimed invention would not result. Independent claims 1 and 10 specifically recite the claimed enforcing step occurs "prior to installing said subject application component." Although Donohue teaches "applying updates to programs installed on the local system" (column 9, lines 48-49), Donohue is silent with regard to when the updating occurs during the installation of a subject application component. Zimniewicz is also silent with regard to when any updating occurs. Therefore, Zimniewicz and Donohue, either alone or in combination, fail to teach or suggest updating required dependencies which can be accessed in the target platform prior to installation of the subject application component.

Independent claim 7 has also been amend to similarly recite that the component installation engine updates dated ones of the dependencies with updated ones of the dependencies prior to installing application components, and thus, the combination of Zimniewicz and Donohue also fails to teach or suggest the limitations recited in claim 7. Therefore, for the reasons stated above, Applicants respectfully submit that one having ordinary skill in the art would not have arrived at the claimed invention, as recited in claims 1, 7, and 10, under 35 U.S.C. § 103 for obviousness based upon Zimniewicz in view of Donohue.

Applicants have made every effort to present claims which distinguish over the prior art, and it is believed that all claims are in condition for allowance. However, Applicants invite the Examiner to call the undersigned if it is believed that a telephonic interview would expedite the prosecution of the application to an allowance. Accordingly, and in view of the foregoing remarks, Applicants hereby respectfully request reconsideration and prompt allowance of the pending claims.

Although Applicants believe that all claims are in condition for allowance, the Examiner is directed to the following statement found in M.P.E.P. § 706(II):

When an application discloses patentable subject matter and it is apparent from the claims and the applicant's arguments that the claims are intended to be directed to such patentable subject matter, but the claims in their present form cannot be allowed because of defects in form or omission of a limitation, the examiner should not stop with a bare objection or rejection of the claims. The examiner's action should be constructive in nature and when possible should offer a definite suggestion for correction.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 09-0461, and please credit any excess fees to such deposit account.

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Respectfully submitted,

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